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(1)

Supreme Court, U.S.
FILED

SEP 17 2010

OFFICE OF THE CLERK

No. 10-394

IN THE

SUPREME COURT OF THE UNITED STATES

GEOFFREY WILLARD ATWELL,
PETITIONER

vs.

THOMAS F. LAVAN, et al., RESPONDENTS

ON PETITION FOR WRIT OF CERTIOIRARI TO

THE UNITED STATES COURT OF APPLEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Geoffrey Willard Atwell
P.O. Box 18
Akron, PA 17501-0018
Telephone: 484-354-8628 (Cell)

QUESTIONS PRESENTED

I. As **Petitioner** was convicted of violations of **Commonwealth of Pennsylvania** criminal statutes on different dates and was consecutively sentenced for each set of those convictions on different calendar dates, does the **Commonwealth's Consecutive Sentencing Statute** violate **Petitioner's U.S.C.A Civil Rights** when those consecutive sentences are sub-sequentially applied and administered as a consecutive single sentence with minimums and maximums each totaled that ultimately increase **Petitioner's** total imprisonment time versus the sentencing imposed upon different dates and when **Petitioner** began serving the first sentence before subsequent consecutive sentences were imposed?

II. Are all **Respondents' involved with** administrating those **consecutive sentences** liable for the violation of **Petitioner's U.S.C.A. Civil Rights** when **Petitioner** is illegally incarcerated and when each Respondent, who had the ability to institute an inquiry into **Petitioner's** claims as each **Respondent** was involved in administering **Petitioner's** incarceration, acquiesced and/or refused to answer **Petitioner's** sentencing reasons to each **Respondent**?

LIST OF PARTIES

All **Parties** do not appear in the **Caption** of this case on the Cover Page and therefore, below is a list of all **Parties** to the proceedings in the **Court** where **Judgment** is the subject of this **Petition**:

1. **Thomas Lavan**
2. **Edward G. Rendell**
3. **Mark S. Schweiker**
4. **Jeffery A. Beard**
5. **Thomas L. James**
6. **Sharon M. Burks**
7. **Sarah Hart**
8. **Randy Sears**
9. **Donald Kelchner**
10. **Michael J. Kazor**
11. **Charles Marsella**
12. **Krista J. Griffith**
13. **Rex P. Hildebrand**
14. **Lee T. Bernard**
15. **John S. Shaffer**
16. **Michael Farnan**
17. **Mike Fisher**
18. **Mark Bergstrom**
19. **Thomas W. Corbett, Jr.**
20. **Robert A. Greevy**
21. **James O. Thomas, Jr.**
22. **Chuck Roberts**
23. **James J.McGrady**
24. **Robert Faneck**
25. **Georgine Leachy**
26. **C. Zaledonis**
27. **Kenneth Burnett**
28. **Chris Putnam**
29. **Richard Keller**
30. **W. C. West**
31. **Daniel Tucker**
32. **D. J. Smith**
33. **Dave Morris**
34. **Theodore Higgins**
35. **Stanley Bohinski**
36. **R. Stanish**
37. **Scott Thomas**
38. **Sgt. Harrison**
39. **Patricia Ginocchetti**
40. **J. Doknovitch**
41. **Patricia Blizzard**
42. **Eric Myers**
43. **Sheri Gaughan**

LISST OF PARTIES (cont'd.)

44. **Tom Dougherty**
45. **Benjamin A. Martinez**
46. **Sean R. Ryan**
47. **Prison Guard McCrone**
48. **Kathleen Zwierzyna**
49. **Judith B. Selvey**
50. **James Gardner Collins**
51. **Gregory R. Newhauser**
52. **R. Douglas Sherman**
53. **Sgt. Dietrich**

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully requests that this Court issue a Writ of Certiorari to review the below judgment:

OPNIONS BELOW

1. The Opinion of the United States Court of Appeals for the Third Circuit appears at Appendix D. to this Petition and is neither non-precedential nor published.

2. The Memorandums and Orders of the United State District Court for the Middle District of Pennsylvania appear at Appendices F. and G. are unpublished.

JURISDICTION

The date on which the United States Court of Appeals for the Third Circuit filed their decision on my case was February 19, 2010.

A timely Petition for Rehearing En Banc was denied by the United States Court of Appeals for the Third District on April 20, 2010 and a copy of the filing denying rehearing appears at Appendix B.

Petitioner requested an extension of time to file a Petition for Writ of Certiorari for this case and was granted an extension for filing to and including September 17, 2010 and a copy of that letter appears at Appendix A.

The Jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 . (1).

CONSTITUTIONAL AND STATUTAORY PROVISIONS INVOLVED

1. **USCA Amendment 5**
...nor should any person.....be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

II. **USCA Amendment 8**
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments be inflicted.

III. **USCA Amendment 14, Section 1.**
All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of Life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

1. **Petitioner** was consecutively sentenced for violations of Commonwealth of Pennsylvania Title 18 Criminal Statutes beginning November, 1998, with credits back to June, 1998 (Appendices H., Nos. 1.-6.) and was unconditionally discharged May 22, 2004 and **Petitioner** filed an **Amended 42 U.S.C Section 1983 Civil Rights Complaint** January 20, 2004, that was docketed as **1-CV: 03-01728, as Petitioner** had determined, based upon the records of **Petitioner's,** available in his own prison file, that **Petitioner's** sentencing should have been completed May 22, 2002 (upon completion of discovery for this action, **Petitioner** modified his calculations for the completion of his sentencing as October 19, 2002) and **Petitioner's Civil Action Complaint** charged that **Petitioner's Liberty Interest** was denied October 19, 2002 to May 22, 2004 and in violation of **Petitioner's 5th, 8th and 14th USCA Constitutional Amendment Rights.** (**Petitioner** also sued for violation of his 1st **USCA Amendment** Rights but the lower **Federal** Courts eliminated that portion of the **Action** and **Petitioner's Questions Presented No. II.** addresses this area.)

2. **Petitioner's Complaint** stems from his calculation for his sentences based upon sentences

received, **Appendix H., Nos. 1.-6.**, and Pennsylvania sentencing statute **42 Pa. C.S.A. Section 9757, Appendix I.** However, Pennsylvania Department of Corrections (**D.O.C.**) personnel and Commonwealth Officials concerned with serving of Pennsylvania 51st Judicial District Court of Common Pleas of Adams County sentencing for violations of Pennsylvania criminal statutes acquiesced and/or refused to respond to **Petitioner's** written and verbal requests that he was being held in SCI Dallas longer than he was sentenced.

3. Petitioner's **Civil Action** circumstances have been presented to both the **Middle District Court** and **Third Circuit Court** but to no avail as those **Courts'** have not addressed **Petitioner's** claims of denial of **Liberty Interest** and that **Interest** concerns **Petitioner's Liberty** to obtain **freedom from restraint, ability to secure his own medical services and research his own court information. Petitioner** has a **Petition for Writ of Certiorari** now before this **Court, Atwell v. Schweiker, Docket Number 09-1462** that pertains to this **Action's** circumstances and has previously submitted several **Petitions for Write of Certiorari** to this **Court** that are all related to the subject of this **Petition; Atwell v. Commonwealth, 173 L. Ed. 2d 579 (2009); Atwell v. Commonwealth, 164 L. Ed. 2d 72 & 514 (2005)** and **Atwell v. Dean, et al., 168 L. Ed. 2d 710 & 798**, all either denied or dismissed.

REASONS FOR GRANTING THE WRIT

1. **Petitioner** filed a **42 U.S.C. Section 1983 Civil Action Complaint**, as amended January 20, 2004 pursuant the **United States District Court for the Middle District of Pennsylvania (Middle District Court)** requirement, complaining of being denied his **U.S.C.A. A. 5** and **A. 14** rights, with cruel and unusual punishment being inflicted in violation of **U.S.C.A. A. 8**, as **Petitioner's** liberty interest of freedom from confinement and freedom to chose his legal sources for court and desired medical services was denied by illegal confinement by **Respondents'**. **Petitioner's Civil Action** was filed in the **Middle District Court** January 20, 2004 and docketed as **1:CV03-01728.**

2. **Petitioner**, prior to his unconditional discharge from **Pennsylvania Department of Corrections (Pa DOC)** at State Correctional Institution Dallas (SCI Dallas), contacted all **Respondents** via written and/or verbal communications concerning **Petitioner's** complaint of being illegally incarcerated beyond the length of judicially imposed sentencing, as imposed by the **51st Judicial District Court of Common Please of Adams County, PA** {Appendix H. (Nos. 1.-6.)}, and each **Respondent** refused to answer and/or acquiesced. **Petitioner** initially

complained of not being released on May 22, 2002 (subsequently modified to October 19, 2002 after **Petitioner** received a copy of his sentencing orders [Appendix H.] through Discovery for this **Action**.) and when **Petitioner** was unconditionally discharged May 22, 2004.

3. **Petitioner** charges all **Respondents**, including operational and medical personnel involved with his illegal prison confinement at SCI Dallas, with violations of **Petitioner's U.S.C.A. 5th, 8th and 14th Amendment Rights** as **Petitioner** was deprived of his liberty interest without due process of law, per **Baker v. McCallum,** 443 U.S. 137 (1979) and, pursuant **Petitioner's Questions Presented No. II, Petitioner** considers deprivation of liberty, in violation of the **5th** and **14th Amendments**, also as deprivation of liberty to not be able to obtain his desired legal matters for court and desired medical services as those **Amendments** allow and therefore, **Petitioner** does not agree with the lower Courts' submittals other than stating that he only claimed denial of liberty. **Petitioner** has a right to be free from wrongful restraint of his liberty per **Jones v. Cunningham**, 371 U.S. 236 (1967).

4. **Petitioner's Action** is post trial as

Petitioner does not challenge imposed sentencing but challenges **Respondents'** denial of his liberty interest effective October 19, 2002 and **Petitioner** requested **Respondents'** to justify their continued incarceration of **Petitioner** since October 19, 2002 as per **Peyton v. Rowe**, 391 U.S. 54 (1968) but, each **Respondent** refused and/or acquiesced and **Petitioner** considers that his filed **Pa DOC** grievance and contact with **Respondents'** exhausted his Administrative Remedies.

5. Before **Petitioner** cites his disagreement areas with **Appellate** and **District Court** decisions, **Petitioner** presents below his **Adams County Court of Common Please Sentencing** with sentence number, length, starting date and ending date [Appendix H. (Nos. 1.-6.)]:

.	Sent. No.	Length	Start	End
A.	687-98	180 Days	10/20/98	4/18/99
B.	522-99	3-23 ms.	4/18/99	3/18/01
C.	Paroled 522-99 245-98 458-98	10 ms., 23 d	4//19/00	3/20/01
D.	245-98*	1-12 ms.	7/18/99	7/18/00
E.	458-98**	16-36 ms.	8/18/99	8/18/02
F.	754-98***	1-12 ms.	4/19/00	4/19/01
G.	97-99	6-24 ms.	4/19/00	4/19/02
H.	1050-99	6-24 ms.	10/19/00	10/19/02
I.	706-00	3-18 ms.	4/19/01	10/19/02

* **38 days credit on this sentence**

** **24 days credit on this sentence**

*** **Paroled April 20, 2000, effective April 19, 2000, on 522-99, 245-98 and 458-98 and pursuant Commonwealth of Pennsylvania law, parole on criminal sentences can only Be granted after the minimum(s) is (are) served and thusly, a new minimum starts and since 754-98 and 97-99 run concurrently, both sentence minimums began on same date and sentences F.-I. above were all served at SCI Dallas.**

As detailed above, **Petitioner** shows, pursuant Appendix H. (Nos. 1.-6.), that he completed his maximum sentencing on October 19, 2002 and that continued incarceration to May 22, 2004 was illegal. Pursuant Pennsylvania sentencing statute **42, Pa. C.S.A. Section 9757** (Appendix I.), minimums are not to be less than one-half of maximums and this feature pertains to each sentence of **Petitioner's** sentences (Appendix H. (Nos. 1.-6.). Also, all of **Petitioner's** minimum sentences total 36 months plus 180 days and his maximum sentences total 149 months plus 180 days and those sentences comply with **42 Pa. C.S.A. Section 9757** (id). However, **Petitioner** served sentences A., B, D. and E. above at Adams County Prison and only sentences F., G., H. and I. were served at Pa DOC SCI Dallas. **THIS IS WHERE RESPONDENTS' APPLIED 42 Pa. C.S.A. SECTION 9757 (id) INCORRECTLY!**

6. The total minimums for sentences F., G., H.

and I. are 16 months and the total maximums for those sentences are 78 months and **Respondents'** applied the wrong Pennsylvania sentencing statute! Pennsylvania Consecutive Sentencing Statute **42 Pa. C.S.A. Section 9757** (id) was enacted in 1974 and amended in 1980 for actual use and, this Statute replaced Consecutive Sentencing Statute **19 P.S. Section 897** (Appendix J.); which totaled minimums and totaled maximums, and this was for purposes of determining a prisoner's parole eligibility as a prisoner had to petition for parole after completion of each minimum, and the concept of constructive parole was not promulgated. **Petitioner charges that Respondents' followed the concept of 19 P.S. Section 897** (id) **in that Respondents' followed the consecutive concept and did not apply maximums until after all minimums were completed and Respondents' then totaled all maximums as the maximum sentence. Petitioner charges that Respondents' altered Petitioner's sentencing from October 19, 2002 to May 22, 2004 that increased the imposed sentences of the 51st Judicial Court of Common Please of Adams County and this violates Amendments 5, 8 and 14 of the United States Constitution. Petitioner** charges that **Respondents'** denied **Petitioner's**

liberty freedom of capabilities to obtain his desired legal court and medical services, in addition to denial of liberty freedom from illegal restraint. And, **Petitioner** references **PA ex rel .Craig v. Maroney,** 348 F.2d 22, 33 CA3 (PA) 1965, cert. den. 384 U.S. 1019 (1966); In re Ernst, 294 F.2d 556, 561-2, CA3 (1961), cert. den. 368 U.S. 917 (1961); **DeShaney v. Winnebago County Dept. of Soc. Services,** 489 U.S. 189 (1988) and **County of Sacramento v. Lewis**, 523 U.S. 833 (1997). Also, liberty extends beyond free from physical restraint per **Michael H., et al. v. Gerald D.**, 491 U.S. 110 (1988).

7. Regarding the **Third Circuit Court's Opinion** filed February 19, 2010 (Appendix D.), **Petitioner** comments as follows:

A. Regarding affirmation of granting motion for summary judgment for medical defendants, **Petitioner** references comments in his foregoing Nos. 1., 3. and 6. and cites that denial of his liberty freedom to select his own medical services and have desired services that the medical defendants' refused to provide and states that this denial of liberty freedom is denial of **5th** and **14th Amendments** and **Petitioner** addresses this issue above.

B. **Respondents'** cannot aggregate

Petitioner's consecutive sentences pursuant replaced Statue **19 P.S. Section 897** (supra) so that aggregation increases sentencing beyond that imposed [Appendix H. (nos. 1.-6.), supra and No. **5.** above] and **Petitioner** claims that his imposed sentences comply with **42 Pa. C.S.A. Section 9757**, supra, and that aggregating pursuant **19 P.S. Section 897**, supra, is incorrect in that that Statute was replaced with **42 Pa. C.S.A. Section 9757**, supra, and that **Respondents'** method of aggregation of maximum sentences violated the **5th, 8th** and **14th Amendments** of **Petitioner** and is also contrary to **42 Pa. C.S.A. Section 9757**, supra, in that that Statute does not employ the word "Aggregation" and **Petitioner** charges that Pennsylvania **Commonwealth Court** decisions are error. **Third Circuit's** FN 4 does not explain that Constructive Parole commences after minimums and, after one minimum is completed, the next minimum sentence begins but, the sentence of the first minimum continues until maximum is served via imprisonment and/or parole and the next sentences begin after completion of the previous sentence minimum and maximums continue, etc., etc., etc. Therefore, the **Middle District Court's grant of summary judgment is error.**

Petitioner's grievance and letters and verbal communications to **Respondents** complies with exhaustion of administrative remedies.

8. Regarding the **Middle District Court's** grants of summary judgment, **Petitioner's** comments in above **7. A., B. and C.** applies.

9. **Petitioner** references his **United States Supreme Court Docket No. 09-1462** (three copies were provided Mr. Hopkirk of the Pennsylvania Attorney General's office.) as that **Docket's** comments by Petitioner pertain here also. (**Petitioner** notes that in that **Docket Petition**, his Appendix E., No. 3. pages 2.-4. are misplaced and should be part of Appendix E., page 1. and that Appendix E., No. 4., page 2. is the second page of Appendix E., No. 3. and also, **Petitioner** notes that the **Middle District Court Docket No. 1:CV06-1048** is used when the correct **Docket No. of CA3 is 09-2329**.).

10. Under the continuing violation theory, a new claim occurs each day violation is extant and continuing violation applies when conduct is on-going rather than a single event, as was each day of **Petitioner's** illegal incarceration from October 19, 2002 to May 22, 2004, per **Interamericas Investments, Ltd. V. Board of Governors of the Federal Reserve System**, 111 F.3d 376, CA5 (1997).

11. **Petitioner** cites that **Respondents'** held **Petitioner** at SCI Dallas after October 19, 2002 to May 22, 2004 without a Commonwealth of Pennsylvania conviction and/or sentence and **Petitioner** references his **Third Circuit Court** submittal served January 28, 2009, Nos. III. C. and D. on pps. 7.-14. of 18. and all Appendices of that submittal.

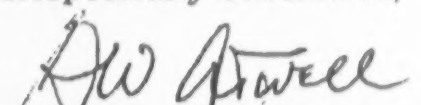
CONCLUSION

Decisions by the **Third Circuit Court** and **Middle District Court for this Civil Action** do not consider **Pennsylvania** statutes as submitted with this **Petition**, Appendices I. and J., and **Respondents'** did not properly apply the Consecutive Sentencing Statute of Appendix I. but used the concept of Appendix J. for which **Petitioner's** sentences of Appendices F., G., H. and I. were increased versus sentencing imposed and after **Petitioner** commenced his sentencing of Appendix A. and that clearly violates **Petitioner's 5th, 8th and 14th Amendment Constitutional Rights.**

All **Respondents'** are liable pursuant **Petitioner's** foregoing reasons and per Appendix H., Nos. 1.-6. **Petitioner** proves that his maximum discharge date was October 19, 2002 and **Petitioner's Liberty Interests** were denied him and that illegal confinement caused a cruel and unusual [punishment.

Petitioner respectfully requests that this **Court** grant **Certiorari** for this **Action.**

Respectfully Submitted,



Geoffrey Willard Atwell,
Pro Se Petitioner

(2)
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APPENDICES COVER

IN THE

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UNITED STATES

GEOFFREY WILLARD ATWELL,
PETITIONER

vs.

THOMAS F. LAVAN, et al.,
RESPONDENTS

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F.	April 1, 2008 Memorandum and Order of Middle District Court	(5)
G.	March 26, 2008 Memorandum And Order of Middle District Court	(7)

H.	**Sentencing Orders of 51st Judicial District Court of Common Pleas of Adams County, Pennsylvania**	**(14)**
I.	**Commonwealth of Pennsyl-Vania Conscutive Sentencing Statute 42 Pa. C.S.A. Section 9757**	**(1)**
J.	**Commonwealth of Pennsyl-vania Consecutive Sentencing Statute 19 P.S. Section 897**	**(1)**

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

July 26, 2010

Mr. Geoffrey Willard Atwell
PO Box 18
Akron, PA 17501-0018

Re: Geoffrey Willard Atwell
v. Michael D. Klopotoski, Superintendent,
Correctional Institution at Dallas, et al.
Application No. 10A104

Dear Mr. Atwell:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Alito, who on July 26, 2010 extended the time to and including September 17, 2010'
This letter haws been sent to those designated on the attached notification list.

APPENDIX A.

Sincerely,

William K. Suter, Clerk

by

(s) **Heather Trant**

Heather Trant
Case Analyst

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-2228

GEOFFREY WILLARD ATWELL,
Appellant

v.

SUPERINTENDENT THOMAS LAVAN; PA GOVERNOR EDWARD G. RENDELL; MARK S. SCHWEIKER; SECRETARY JEFFREY A. BEARD; RANDY SEARS; DONALD KELCHNER; MICHAEL J. KAZOR; CHARLES MARSELLA; KRISTA J. GRIFFITH; REX P. HILDEBRAND; *LEE T. BERNARD; JOHN S. SHAFFER; MICHAEL FARNAN; MIKE FISHER; MARK BERGSTROM; THOMAS W. CORBETT, JR.; ROBERT A. GREEVY; JAMES O. THOMAS, JR.; CHUCK ROBERTS; JAMES J. MCGRADY; ROBERT FANECK; GEORGINE LEACHEY; ZALEDONIS; KENNETH BURNETT; CHRIS PUTNAM; RICHARD KELLER; W.C. WEST; DANIEL TUCKER; D.I. SMITH; DAVE MORRIS; THEODORE HIGGINS; D.O. STANLEY BOHINSKI; R. STANISH; SCOTT THOMAS; SGT. HARRISON; PATRICIA GINOCCHETTI; J.

APPENDIX B.

DOKNOVITCH; PATRICIA BLIZZARD; ERICMYERS; SHERI GAUGHAN; TOM DOUGHERTY; BENJAMIN MARTINEZ; SEAN R. RYAN; PRISON GUARD MCCRONE; KATHLEEN ZWIERZYNA; JUDITH B. SELVEY; JUDGE JAMES GARDNER COLLINS; GREGORY R. NEUHAUSER; R. DOUGLAS SHERMAN; SGT. DIETRICH

(*PER CLERK'S ORDER 2/3/09)

SUR PETITION FOR REHEARING EN BANC

Present: SIRICA, Chief Judge, SLOVITER, McKEE, BARRY, AMBRO, FUENTES, SMITH, CHAGARES, JORDAN, and HARDIMAN, GREENAWAY AND * NYGAARD, Circuit Judges

---

The petition for rehearing filed by Appellant in the above-entitled matter, having been submitted to the judges who participated in the decision of this court and to all other available circuit judges of the circuit in the regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for rehearing, the Petition for Rehearing by the panel and the Court en banc, is DENIED.

BY THE COURT:

/s/ Julio M. Fuentes
Circuit Judge

DATED: April 20, 2010
Par/cc: G.W.A.
J.B. DeL., Esq.

---

*Judge Nygaard's vote is limited to panel rehearing only.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-2228

GEOFFREY WILLARD ATWELL,
Appellant

v.

SUPERINTENDENT THOMAS LAVAN; PA GOVERNOR EDWARD G. RENDELL; MARK S. SCHWEIKER; SECRETARY JEFFREY A. BEARD; RANDY SEARS; DONALD KELCHNER; MICHAEL J. KAZOR; CHARLES MARSELLA; KRISTA J. GRIFFITH; REX P. HILDEBRAND; *LEE T. BERNARD; JOHN S. SHAFFER; MICHAEL FARNAN; MIKE FISHER; MARK BERGSTROM; THOMAS W. CORBETT, JR.; ROBERT A. GREEVY; JAMES O. THOMAS, JR.; CHUCK ROBERTS; JAMES J. MCGRADY; ROBERT FANECK; GEORGINE LEACHEY; ZALEDONIS; KENNETH BURNETT; CHRIS PUTNAM; RICHARD KELLER; W.C. WEST; DANIEL TUCKER; D.I. SMITH; DAVE MORRIS; THEODORE HIGGINS; D.O. STANLEY BOHINSKI; R. STANISH; SCOTT THOMAS; SGT. HARRISON; PATRICIA GINOCCHETTI; J.

APPENDIX C.

DOKNOVITCH; PATRICIA BLIZZARD; ERICMYERS; SHERI GAUGHAN; TOM DOUGHERTY; BENJAMIN MARTINEZ; SEAN R. RYAN; PRISON GUARD MCCRONE; KATHLEEN ZWIERZYNA; JUDITH B. SELVEY; JUDGE JAMES GARDNER COLLINS; GREGORY R. NEUHAUSER; R. DOUGLAS SHERMAN; SGT. DIETRICH

(*PER CLERK'S ORDER 2/3/09)

On Appeal from the United States District Court
For the Middle District of Pennsylvania
(M.D. Pa Civ. No. 03-cv-01728)
District Judge: **Honorable Sylvia H. Rambo**

Submitted Pursuant to Third Circuit **LAR 34.1 (a)**

February 2, 2010
Before: **McKee, Fuentes and Nygaard,**
Circuit Judges

JUDGMENT

This case came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on February 2, 2010. On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the orders of the District Court entered March 26, 2008 and April 1, 2008 are hereby affirmed. Costs taxed against Appellant. All of the above in accordance with the opinion of this Court

ATTEST:

/s/ Marcia M. Waldron,
Clerk

Dated: 19 February 2010

NOT PRESEDENTIAL
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 08-2228

GEOFFREY WILLARD ATWELL,
Appellant

v.

SUPERINTENDENT THOMAS LAVAN; PA GOVERNOR EDWARD G. RENDELL; MARK S. SCHWEIKER; SECRETARY JEFFREY A. BEARD; RANDY SEARS; DONALD KELCHNER; MICHAEL J. KAZOR; CHARLES MARSELLA; KRISTA J. GRIFFITH; REX P. HILDEBRAND; *LEE T. BERNARD; JOHN S. SHAFFER; MICHAEL FARNAN; MIKE FISHER; MARK BERGSTROM; THOMAS W. CORBETT, JR.; ROBERT A. GREEVY; JAMES O. THOMAS, JR.; CHUCK ROBERTS; JAMES J. MCGRADY; ROBERT FANECK; GEORGINE LEACHEY; ZALEDONIS; KENNETH BURNETT; CHRIS PUTNAM; RICHARD KELLER; W.C. WEST; DANIEL TUCKER; D.I. SMITH; DAVE MORRIS; THEODORE HIGGINS; D.O. STANLEY BOHINSKI; R. STANISH; SCOTT THOMAS; SGT. HARRISON; PATRICIA GINOCCHETTI; J. DOKNOVITCH;

APPENDIX D.

PATRICIA BLIZZARD; ERICMYERS; SHERI GAUGHAN; TOM DOUGHERTY; BENJAMIN MARTINEZ; SEAN R. RYAN; PRISON GUARD MCCRONE; KATHLEEN ZWIERZYNA; JUDITH B. SELVEY; JUDGE JAMES GARDNER COLLINS; GREGORY R. NEUHAUSER; R. DOUGLAS SHERMAN; SGT. DIETRICH

(*PER CLERK'S ORDER 2/3/09)

On Appeal from the United States District Court
For the Middle District of Pennsylvania
(M.D. Pa Civ. No. 03-cv-01728)
District Judge: **Honorable Sylvia H. Rambo**

Submitted Pursuant to Third Circuit **LAR 34.1 (a)**

February 2, 2010

Before: **McKee, Fuentes and Nygaard,**
Circuit Judges

OPINION

(2.)

PER CURIAM

Geoffrey Atwell, a former state prisoner proceeding pro se, appeals two orders of the United States District Court for the Middle District of Pennsylvania granting summary judgment in favor of defendants in his civil rights action. We will affirm.

Atwell filed a civil rights action against 54 defendants, including prison employees and other Commonwealth of Pennsylvania employees, alleging that he was improperly incarcerated beyond the expiration of his prison sentence. Atwell claimed that his sentence expired October 19, 2002, but that he was not released from prison until May 22, 2004.

Atwell also claimed that the defendants violated his right of access to the courts and that they were deliberately indifferent to his medical needs. (fn 1.)

The District Court dismissed fourteen of the defendants pursuant 28 U.S.C. Section 1915(e)(2) and later granted an additional defendant's motion to dismiss the complaint. Following discovery, the remaining Commonwealth defendants moved for summary judgment. Two medical defendants, Dr. Stanish and Dr. Bohinski, also filed a motion for summary judgment. Atwell filed a cross motion for summary judgment. The Magistrate Judge recommended that the District Court grant the

fn. 1: Atwell pursued his amended complaint filed on January 20, 2004. Although Atwell asserted in his amended complaint that his sentence expired on May 22, 2002, he later maintained that his sentence expired on October 19, 2002.

Motions of the Commonwealth defendants and Dr. Stanish and Dr. Bohinski and deny Atwell's motion. The District Court adopted the Magistrate Judge's reports and recommendations, and this appeal followed.

We have jurisdiction pursuant to 28 U.S.C. Section 1291. Our standard of review of a grant of summary judgment is de novo. Watson v. Abington Township, 478 F.3d 144, 155 (3rd Cir. 2007). In his brief, Atwell challenges the grant of summary judgment in favor of the Commonwealth defendants on his excessive enforcement claim and the grant of summary judgment in favor of Dr. Stanish and Dr. Bohinski. We will address the rulings.(fn.2.)

Fn.2. To the extent Atwell challenges in his reply

In , granting summary judgment on Atwell's excessive confinement claim, the District Court recognized that the Eighth Amendment protects an inmate from being incarcerated beyond the term of his sentence, Sample v. Diecks, 885 F.2d 1099, 1108 (3rd Cir 1989). Here, the record reflects that Atwell received consecutive sentences in connection with convictions in the Court of Common Pleas of Adams County. Atwell believes that his maximum date for these sentences was miscalculated, resulting in more than a year of excessive confinement.

Fn.2 (cont.)
briefs the District Court's rulings on his access to the courts claim and his denial of medical care claim against defendants other than Stanish and Bohinski, he did not adequately raise these issues in his opening brief and they are waived. Kost v. Kozakiewicz, 1 F.3d 176, 182 (3rd Cir. 1993). Summarily, to the extent Atwell seeks to appeal other District Court orders issued during the course of the proceedings below, Atwell's brief contains no argument as to those orders and we do not consider them.

Atwell's belief is based on the misconception that corrections officials could not aggregate his maximum sentence. Under Pennsylvania law, when a sentencing court imposes a consecutive sentence, aggregation with other consecutive sentences is automatic and mandatory under 43 Pa Cons. Stat. Section 9757. Com. Ex. Rel. Smith v. Pennsylvania Dep't of Corr., 8229 A.2d 788, 793 (Pa. Commw. Ct. 2003); Gillespie v. Commonwealth, 527 A.2d 1061, 1065 (Pa. Commw. Ct. 1987).(fn 3.). Atwell's contention that maximum sentences are not aggregated is incorrect. In Gillespie, the Commonwealth Court stated that maximum sentences are aggregated, explaining that aggregation is necessary to make workable the last

part of Section 9757, which requires that a total minimum sentence shall not exceed one-half of the maximum sentence imposed. 527 A.2d at 1065. (fn 4.)

Although the Commonwealth defendants concede that errors were made as to the correct effective date for Atwell's sentences and his sentence calculation, Atwell was released before the maximum expiration date of his sentences. See 12/21/07 Magistrate Judge's Report at 45-446, 49. The District Court did not err in granting summary judgment for the Commonwealth defendants on Atwell's excessive confinement claim.(fn 5.) Exhaustion of available

fn 3. 42 Pa. Cons. Stat. Section 9757 provides: "Whenever the court determines that a sentence should be served consecutively to one then being imposed by the court, or to one previously imposed, the court shall indicate the minimum sentence to be served for the total of all offenses with respect to the which sentence is imposed. Such minimum sentence shall not exceed one-half the maximum sentence imposed."

remedies is required for any suit challenging prison Conditions. Woodford v. Ngro, 548 U.S. 81, 85 (2006). Stanish and Bohinski established that Atwell filed ten grievances before filing his complaint. While Atwell grieved about his mail, the length of his confinement, and other issues, he did not grieve about the medical care that is the subject of his amended complaint. The record also reflects that

Fn 4. The Commonwealth Court explained, "As an example, a prisoner subject to a sentence of two to four years is subsequently sentenced to a consecutive three to six year sentence whose minimum terms are aggregated under 42 Pa. C.S. Section 9757 for a total minimum term of five years. If the maximum terms were not also aggregated and constructive parole was allowed on the two to four year sentence at the two year point, the combined term would be eight years. Thus, the prisoner's sentence would be, if the maximum term were not automatically aggregated along with the minimum terms, a five to eight year sentence in violation of the last portion of 42 Pa.C.C. Section 9757 that mandates that the aggregated minimum term shall not exceed one-half of the maximum term" Id. At 1065-66.

Atwell was asked at his deposition whether he had filed a grievance about not receiving a medical diet but that he did not recall whether he had filed a grievance about his treatment for the ailments at issue. Atwell did not produce in response to the summary judgment motion evidence of any grievance related to the treatment of these ailments.

Fn 5. Based on this conclusion, we do not address the District Court's alternative conclusions that Atwell's claim is barred by Heck v. Humphrey, 512 U.S. 477 (1994), and that Atwell did not show deliberate indifference on the part of the defendants. We also do not address Atwell's argument in his brief that Section 9757 is unconstitutional, as he did not challenge the unconstitutionality of the statute in his amended complaint.

Fn 6. Although Stanish and Bohinski argue that Atwell has waived this issue by failing to raise it in his brief, Atwell states in his brief that the District Court erred in granting summary judgment in their favor and he refers to evidence purporting to establish that he exhausted his administrative remedies. See Appellant's Br. At 16. We will thus address this issue.

In his brief, Atwell relies on documents related to Grievance Number 40189. As recognized by the District Court, this grievance only involved Atwell's complaint of excessive confinement. Thus, the District Court did not err in granting summary judgment for Stanish and Bohinski based on a failure to exhaust administrative remedies.

Accordingly, we will affirm the orders of the District Court. (fn 7.)

Fn 7. The scope of this appeal is limited to the District Court's orders granting summary judgment. Atwell did not file a notice of Appeal from the District Court's denial of his motion for reconsideration. See Fed. R. App. P. 4(a)(4)(B)(ii).

AO 450 (Rev. 5/85) Judgment in a Civil Case

UNITED STATES DISRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JUDGMENT IN A CIVIL CASE

Geoffrey Willard Atwell,

Case No: 1:03-CV-1728

Plaintiff

v.

Judge Sylvia H. Rambo

Superintendent Thomas Lavan, et al.

Defendants

Decision by Court: This action came to trial or hearing before the court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that summary judgment be and is hereby entered in favor of the Defendants, D.O. Stanley Bohinski and R. Stanish, and against Plaintiff, Geoffrey Willard Atwell.

IT IS FURTHER ORDERED that summary judgment is entered in favor of Defendants, Thomas Lavan, Jeffrey A. Beard, Thomas L. James. Sharon M. Burks, Donald Kelchner, Michael J. Kazor, Charles Marsella, Krista J.

APPENDIX E.

Griffith, Rex P. Hildebrand, Lee T. Bernard, John S. Shaffer, James J. McGrady, Robert Faneck, Georgine Leachey, C. Zaleadonis, Kenneth Burnett, Chris Putnam, Richard Keller, W.C. West, Daniel Tucker, D.I. Smith, Dave Morris, Throdore Higgins, Scott Thomas, Sgt. Harrison, Patricia Ginocchetti, J. Doknovitch, Eric Myers, Sheri Gaughan, Benjamin A. Martinez, Sean R. Ryan, Prison Guard McCrone, Kathleen Zwierzyna, Judith B. Selvey, Sgt. Dietrich, and against Plaintiff Geoffrey Willard Atwell.

Date: April 1, 2008

Mary E. D'Andrea,
Clerk of Court

/s/ Mark J. Ambruster,
Deputy Clerk

IN THE UNITED STATES DISRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GEOFFREY WILLARD ATWELL
Plaintiff

CIVIL NO. 1:CV-03-1728

v. **(Judge Rambo)**
(Magistrate Judge Blewitt)

THOMAS LAVAN, ET AL.,
Defendants

MEMORANDUM AND ORDER

Before this court is a January 2, 2008 report and recommendation of the magistrate judge addressing cross-motions for summary judgment filed by Defendants Dr. Stanish and Dr. Bohinski ("the Medical Defendants") and by Plaintiff. The report recommends that summary judgment be

APPENDIX F.

granted in favor of the Medical Defendants and against Plaintiff and that Plaintiff's motion for summary judgment be denied.

The procedural history of this case will not be set forth herein as it is adequately set forth in the January 22, 2008 report and recommendation. The magistrate judge found that Plaintiff only alleges that the personal involvement of the Medical Defendants with respect to his Eighth Amendment claim of denial of proper medical care. The grounds for the Medical Defendants motion for summary judgment are that (1) Plaintiff failed to exhaust his administrative remedies under the Department of Corrections policy, DC-ADM 804, as required pursuant to the Prison Litigation Reform Act, 42 U.S.C. Section 1997(a); and (2) Plaintiff failed to

demonstrate that the Medical Defendants had subjective knowledge that their actions presented a substantial risk of harm to Plaintiff and, at most, Plaintiff only presented a disagreement as to the choice of medical treatment.

Because the magistrate judge viewed the failure to exhaust claim as a threshold issue, that issue was the only issue addressed in the report and recommendation. The magistrate judge found that Plaintiff had not exhausted his administrative remedies and recommended that the Medical Defendants' motion for summary judgment be granted.

In Plaintiff's objections to the report and recommendation, he completely by-passes the issue of exhaustion except for a conclusory statement

"Plaintiff exhausted his administrative remedies." (Pltf.'s Suppl. Objs., doc. 247 at p. 17.) Plaintiff's objections pertain to issues which do not involve Medical Defendants.

The magistrate judge's thorough review of the record supports his recommendation that the Medical Defendants' motion for summary judgment be granted on this basis that Plaintiff has failed to exhaust his administrative remedies.

IT IS THEREFORE ORDERED THAT:

1) The court adopts the January 2, 2008 report and recommendation of Magistrate Judge Blewitt.

2) The only issue involving Drs. Stanish and Bohinski is an Eighth Amendment claim of inadequate medical care.

3) The motion for summary judgment filed by Defendants Stanish and Bohinski is granted.

4) Plaintiff's motion for summary judgment is denied.

5) The Clerk of Court shall enter judgment in favor of all defendants and against Plaintiff and close the file. (fn 1.)

6) Any appeal from this order will be deemed frivolous and not taken in good faith.

/s/ Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: April 1, 2008

Fn 1. The court granted summary judgment in favor of the Commonwealth Defendants by order dated March 26 2008 and deferred the entry of that judgment until the conclusion of this case.

IN THE UNITED STATES DISRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GEOFFREY WILLARD ATWELL
Plaintiff

CIVIL NO. 1:CV-03-1728

v. **(Judge Rambo)**
(Magistrate Judge Blewitt)

THOMAS LAVAN, ET AL.,
Defendants

MEMORANDUM AND ORDER

Before this court is a December 21, 2007 report and recommendation of the magistrate judge addressing cross-motions for summary judgment filed by Commonwealth Defendants and by Plaintiff. (fn 1.) The procedural history of this case will not be

APPENDIX G.

Set forth herein as it is adequately set forth in the December 21, 2007 report and recommendation and is not in dispute.

The claims before this court come by way of a complaint filed pursuant to 42 U.S.C. Section 1983 alleging numerous defendants violated three of Plaintiff's constitutional rights, i.e. an Eighth Amendment excessive confinement claim; an Eighth Amendment denial of proper medical care; and a First Amendment claim of denial of access to court.

Plaintiff's complaint alleges that he was being held in custody beyond the expiration of his sentence and that he was denied access to the courts and

Fn 1. A motion for summary judgment was also filed by Defendants Stanish and Bohinski which is addressed in a separate report and recommendation by the magistrate judge.

necessary medical care. The magistrate judge, after a thorough examination of the facts and the law applicable thereto, recommended that the Commonwealth Defendants' motion for summary judgment be granted as to all of Plaintiff's claims against them and that judgment be entered in favor of all of the Commonwealth Defendants and against Plaintiff. He further recommended that Plaintiff's cross motion for summary judgment against Commonwealth Defendants be denied.

Plaintiff has filed objections encompassing 36 pages. In summary, he alleges that the magistrate judge only considered Defendants' motion and brief and did not address Plaintiff's motion and brief. He further alleges that had the magistrate judge considered Plaintiff's submission, he would have found material facts in dispute so that the magistrate judge could not have recommended

granting the Commonwealth Defendants' motion for summary judgment.

The standards governing the court's consideration of Federal Rule of Civil Procedure 56(c) cross-motions are the same as those governing motions for summary judgment, (fn 2.) although the court must construe motions independently, viewing the evidence presented by each moving party in light most favorable to the non-movant. Raymond Proffitt Fund v. U.S. Environmental Protection Agency, 930 F. Supp.1088, 1096 (E.D. Pa. 1996).

The allegation that the magistrate judge failed to give consideration to Plaintiff's submissions is without foundation. The magistrate judge makes references to document 189 (Plaintiff's brief in support of his motion for summary judgment),

Fn 2. The magistrate judge has set forth the appropriate standard in his report and recommendation of December 21, 2007 at page 8.

and document 191 (Plaintiff's appendix to his brief). The copies of those file documents received from the magistrate judge contain highlighting and have numerous pages tabbed.

Significantly, Plaintiff's motion for summary judgment only addressed the issue of Plaintiff's illegal incarceration. The exhibits in Plaintiff's appendix (doc. 191) were used by the magistrate judge in addressing this issue. The arguments in support of Plaintiff's motion for summary judgment on the illegal incarceration issue are the same arguments set forth in Plaintiff's opposition brief to the Commonwealth Defendants' motion for summary judgment. It would have been a waste of judicial resources for the magistrate judge to write two separate reports and recommendations on cross-

motions for summary judgment. No other arguments are set forth in the objections other than a reiteration of Plaintiff's factual disputes that have been addressed by the magistrate judge.

IT IS THEREFORE ORDERED THAT:

1. The court adopts the December 21, 2007 report and recommendation of Magistrate Judge Blewitt.
2. The Commonwealth Defendants' motion for summary judgment is granted.
3. Plaintiff's cross-motion for summary judgment is denied.
4. The clerk of court shall defer the entry of Judgment in favor of the Commonwealth Defendants and against Plaintiff until the conclusion of this case.
4. Any appeal from this order will be deemed

frivolous and not taken in good faith.

/s/ Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: March 26, 2008

IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY, PENNSYLVANIA

Criminal

Commonwealth **CC-678-98**
vs.
Geoffrey Willard Atwell

ORDER OF COURT

And now this 23rd day of November, 1998, The Defendant appeared with counsel for the purpose of sentencing on two charges of criminal mischief in violation of Section 3304 (a)(1) of the Crimes Code as charged in Citations P0016111-4 and M0006290-4.

The sentence of the Court is that the Defendant shall be incarcerated in the Adams County Prison for a period of 90 days on each charge to run consecutive for a total of 180 days effective October 20, 1998. The Defendant shall pay the costs and all other fees, fines and costs mandated by law, Local Rule of Court or Administrative Order of Court and restitution to Mary Wehler in the amount of $322.84 for damage done at her home and in amount of $182.39 for damage done to her vehicle.

APPENDIX H. (N0.1.)

BY THE COURT,

/s/John D. Kuhn, Judge

Paul Dean, Esq.

Farley Holt, Esq.

Alice K. Wooters, RPR
Official Court Reporter

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

Criminal

Commonwealth **CC-522-99,**

Vs.

Geoffrey Willard Atwell

ORDER OF COURT

And now this 8th day of November, 1999, the Defendant appeared with counsel for purposes of sentencing. The Sentence of the Court on Count one, false reports to law enforcement agencies under Section 4906(a) of the Crimes Code as a misdemeanor of the second degree is that the Defendant shall be incarcerated in the Adams County Prison for a period of no less than 3 nor more than 23 months. He shall pay a fine in the sum of $150.00,

APPENDIX No. H. (NO. 2.)

the costs, and all other fees, fines and costs mandateed by Law, Local Rule of Court or Administrative Order of Court.

The effective date of this sentence is April 20, 1999.The Court will impose no additional sentence with regard to Count two as the Court considers Count two merging with Count one.

BY THE COURT,

/s/John D. Kuhn, Judge

Paul Dean, Esq.

Roy Keefer, Esq.

Alice K. Wooters, RPR
Official Court Reporter

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY, PENNSYLVANIA

Criminal

Commonwealth	**CC-522-99, CC-245-98, CC-458-98,**
Vs.	**Length of parole:**
Geoffrey Willard Atwell	**10 M., 23 D. Max. release date** 3-20-01 File: Ofc.

BY THE COURT

And now this 19th day of April, 2000, effective 4/19/00, so long as the Defendant complies with the rules and regulations of the Adams County Prison, the defendant is released on parole for the balance of his unexpired sentence(s) subject to the standard conditions and special conditions.

Defendant is release to any outstanding detainers lodged against the defendant.

Defendant is required to pay a $25.00 month supervision fee.

APPENDIX H. (No. 3.)

BY THE COURT,

/s/John D. Kuhn, Judge

IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY, PENNSYLVANIA

Criminal

Commonwealth **CC-245-98, CC-458-98**

Vs. **CC-754-98, CC-97-99**

Geoffrey Willard Atwell

ORDER OF COURT

And now this 22nd day of May, 2000, in consideration of Defendant's motion for modification of sentence wherein it appears that the Sentence of the Court entered April 11, 2000 was based upon an incorrect prior record score for the Defendant and that the correct prior record score is one instead of two and that all offense gravity scores were correct, the Defendant's motion is granted as follows.

The Sentences entered on April 11, 2000 are modified in the following regard: The Sentence of the Court in CC-245-98 is as follows:

APPENDIX H. (NO. 4.)

On Count one, theft by unlawful taking in violation of Section 3921(a) of the Crimes Code as a misdemeanor of the third degree, the Defendant shall be incarcerated for a period of no less than one nor more than twelve months. On Count two, criminal mischief in violation of Section 3304(a)(1) of the Crimes Code as a summary offense, the Defendant shall be incarcerated for a period of 90 days. The effective date of each sentence in CC-245-98 is consecutive to the sentence imposed in CC-522-99 by Order of Sentence dated November 8, 1999. In this matter the Defendant is entitled to 38 days credit.

The Sentence of the Court in CC-458-98 is as follows: On Count three, recklessly endangering in violation of Section 2705 of the Crimes Code as a misdemeanor in the second degree, the Defendant shall be incarcerated for a period of no less than six nor more than 24 months. On Count four, stalking in violation of Section 2709(b)(2) of the Crimes Code as a misdemeanor of the first degree, the Defendant shall be incarcerated for a period of no less than six nor more than 24 months. On Count six, which is noted as Count five on the verdict form, intimidation of witness in violation of Section 4952 (a)(3) of the Crimes Code as a felon of the third degree, the Defendant shall be incarcerated for a period of no

less than 16 nor more than 36 months. Each of these counts shall be served concurrently with one another but consecutive to the sentence imposed this date in CC-245-98. It is noted that the Defendant is entitled to 24 days credit on these sentences.

In CC-754-98, the Sentence of the Court on Count one, harassment by communication in violation of Section 5504(a)(1) of the Crimes Code as a misdemeanor of the third degree is that the Defendant shall be incarcerated for no less than one nor more than twelve months. It is noted that Count two, harassment by comm.-unication, merges with Count one.

The Sentence of the Court on CC-97-99 is as follows: Count one, stalking in violation of Section 2709(b)(2) of the Crimes Code as a misdemeanor of the degree, the Defendant shall be incarcerated for a period of no less than six nor more than 24 months. On Count two, harassment by communication in violation of Section 5504(a)(1) of the Crimes Code as a misdemeanor of the third degree, the Defendant shall be incarcerated for a period of no less than one nor more than twelve months. Count three, harassment by communication merges with Count two.

All sentences imposed in CC-754-98 and CC-97-99 shall run concurrently with one another but shall be served consecutive to the sentence imposed in CC-458-98.

In each of the cases, the Defendant shall be subject to the same financial obligations imposed in the Order of April 11, 2000.

BY THE COURT,

/s/John D. Kuhn, Judge

Paul Dean, Esq.

Farley Holt, Esq.

Alice K. Wooters, RPR
Official Court Reporter

IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY, PENNSYLVANIA

Criminal

Commonwealth **CC-1050-99**

Vs.

Geoffrey Willard Atwell

ORDER OF COURT

And now this 22nd day of May, 2000, the Defendant appeared with counsel for purposes of sentencing. The sentence of the Court on violation of Section 2703.1 of the Crimes Code as a felony of the third degree is that the Defendant shall be incarcerated in a State Correctional Institution for a period of no less than six nor more than 24 months. He shall pay the costs, a $100 fine and all fees, fines and costs mandated by law, Local Rule of Court or Administrative Order of Court. This sentence shall be served consecutive to the sentence imposed in CC-97-99.

The Defendant may be transported by the SheRiff of Adams County to the State Correctional Institution for purposes of executing this sentence.

APPENDIX H. (NO. 5.)

BY THE COURT,

/s/John D. Kuhn, Judge

Paul Dean, Esq.

Roy Keefer, Esq.

Alice K. Wooters, RPR
Official Court Reporter

IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY, PENNSYLVANIA

Criminal

Commonwealth **CC-706-00**

Vs.

Geoffrey Willard Atwell

ORDER OF COURT

And now this 20th day of March, 2001, the Defendant appeared with counsel for purposes of sentencing. The sentence of the Court is that the Defendant shall incarcerated in a State Correctional Institution for a period of no less than 3 nor more than 18 months, which sentence shall run consecutive to the sentence previously imposed in CC-1050-99.

The Defendant shall pay the costs of this proceeding, a $25 service fee, a $10 fee to the Adams County Law Enforcement Fund and all other fees, fines and costs mandated by Law, Local Rule of Court or Administrative Order of Court..

APPENDIX H. (NO. 6.)

BY THE COURT,

/s/John D. Kuhn, Judge

Paul Dean, Esq.

Roy Keefer, Esq.

Alice K. Wooters, RPR
Official Court Reporter

SENTENCING **42 Pa C.S.A. SECTION 9757**

Section 9757. **Consecutive sentences of total confinement for muliple offenses**

Whenever the court determines that a Sentence should be served consecutively to one being then imposed by the court, or to one previously imposed, the court shall indicate the minimum sentence to be served for the total of all offenses with respect to which sentence is imposed. Such minimum sentence shall not exceed one-half of the maximum sentence imposed.

1974, Dec. 30, P.L. 1052, No. 345, Sect. 1, effective in 90 days.Amended 1980, Oct, 5, P.L. 693, No. 142, Sect. 401(a), effective In 60 days. (Ths section was transferred from 18 PaC.S.A.Section 1357 by the 1980 Act.)

APPENDIX I.

SENTENCING 19 P.S. SECTION 897

Section 897. Consecutive sentences, Computation of

Whenever, after the effective date of this act, two or more sentences to run consecutively are imposed by any court of this Commonwealth upon any person convicted of crime therein, there shall be deemed to be imposed upon such person a sentence the minimum of which shall be the total of the minimum limits of the several sentences so imposed, and the maximum of which shall be the total of the maximum limits of such sentences.1937, June 25, P.L. 22093, No. 420, Section 1.

Historical Note

Title of Act:

An Act defining the method of computing the aggregate minimum and maximum limits of consecutive sentences imposed upon persons convicted of crime. 1937, June 25, P.L. 2093, No.420

APPENDIX J.

179

(3)

Supreme Court, U.S.
FILED
DEC 23 2010
OFFICE OF THE CLERK

NO. 10-394

IN THE

SUPREME COURT OF THE UNITED STATES

GEOFFREY WILLARD ATWELL, PETITIONER

V.

THOMAS F. LAVAN, et al., RESPONDENTS

ON PETITION FOR REHEARING

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
DOCKET NO. 08-2228

GEOFFREY WILLARD ATWELL, PETITIONER

P.O. BOX 18
AKRON, PENNSYLVANIA 17501-0018
Telephone Number: 484-354-8628

NO. 10-394

GEOFFREY WILLARD ATWELL,
Petitioner

V.

THOMAS F. LAVEN, et al.,
Respondents

PETITION FOR REHEARING

1. On November 29, 2010, this **Court denied Petitioner's Petition For Writ of Certiorari** to the **United States Court Of Appeals for the Third Circuit Docket No. 08-2228** and **Petitioner QUESTIONS** that **Denial claiming FAILURE TO ADEQUATELY CONSIDER PETITIONER'S CIRCUMSTANCES OF BEING ILEGALLY INCARCERATED BY RESPONDENTS IN VIOLATION OF PETITIONER'S U.S.C.A. AMENDMENTS 5, 8 AND 14.**

2. Pursuant **Petitioner's Petition Appendices H. (No. 1. to and including No. 6.)**, **Petitioner** fulfilled Commonwealth of Pennsylvania consecutive sentence requirements pursuant **Petition Appendix I.** on October 19 2002 but **Petitioner** was illegally incarcerated by Respondents' actions until May 22, 2004 and as **Petitioner's**

consecutive sentence serving complied with Pennsylvania law, common logic and mathematics for Petitioner's completion of imposed minimum sentences legally requires commencing the first consecutive sentence maximum on first minimum and then the second maximum sentence commences after completion of first minimum and so forth for all imposed consecutive sentences, i. e. once a minimum is completed, the next sentence with its maximum begins and so forth for each imposed consecutive sentence. Therefore, each maximum is running when a minimum commences and once all minimum sentences are completed and so have some maximum corresponding sentences been completed as several maximums can be running simultaneously. Petitioner's above statement contradicts Respondents' term "AGGREGATION OF MAXIMUM SENTENCES" as the term "AGGREGATION" IS NOT IN Pennsylvania Statute 42 Pa C.S.A. Section 9757 (Petition Appendix I.) and each maximum sentence is "COMPLETD AT END OF EACH IMPOSED SENTENCE MAXIMUM" and this contradicts the word "AGGREGATION". Evidently, this Court disagrees with Petitioner"s

above statements but, this **Court cannot argue for maximum aggregation after completion of all imposed minimum consecutive sentences as each imposed consecutive maximum sentence began at a different time after completion of each imposed minimum consecutive sentence and Petitioner charges that the District Court and Appellate Courts' are in error with their decisions in this action.**

3. **Petitioner challenges this Court's mathematics of aggregation of the Commonwealth of Pennsylvania's consecutive sentence maximums as lengthening of Petitioner's imposed sentencing after the commencing of the imposed sentences and this is a violation of U.S.C.A. Amendments 5. and 14. (as applied to the States)** and also, **that denial of Petitioner's Liberty Interest of Freedom inflicts a cruel and unusual punishment in violation of U.S.C.A. Amendment 8.** As **Pro Se Petitioner** understands the law, the actions by **Respondents' are a violation of Petitioner's U.S.C.A. Civil Rights and actionable under 42 U.S.C. Section 1983 and Petitioner claims that Certiorari should be granted as Petitioner believes judgment should be in his favor.**

4. This **PETITION FOR REHEARING** references

circumstances of a substantial controlling effect and those circumstances are presented per **Petition Appendices H. (Nos. 1.-6.) and Petitioner's Petition cites reasons for granting the Writ and Petitioner cites that their simplicity appears beyond the scope of this Court, e.g., Petitioner's Writ Reason No. 5.** lists prison sentences being served by **Petitioner** at Pennsylvania Department of Corrections State Correctional Institution Dallas and they are **No. 5.F., 5.G., 5.H. and 5.I.**, pursuant the above referenced **Appendices H. (Nos. 1.-6.)** and, this **Court** should reference **Appendix I.** as the imposed minimums (either individually or totally) are less than one half the imposed maximums and, **Petitioner's maximum sentence time was completed on October 19, 2002 and not May 22, 2004** but, this **Court agrees with Respondents'** that May 22, 2004 (49 months and 3 days) should be the total maximum time for all four of those sentences and when no one sentence maximum was more than (24) months and **Petitioner claims that this Court sanctions the increasing of prison sentences past court imposed maximum sentence(s) and therefore condones violations of Petitioner's U.S.C.A. Amendment 5, 8 and 14 rights.**

5. A consecutive sentence, pursuant Commonwealth of Pennsylvania **42 Pa C.S.A. Section 9757 (Petition Appendix I.)** is when

a sentence (or sentences) are imposed to follow each other but, Pennsylvania's above Statute does not require that the maximum sentences be added for a total maximum time as once the imposed sentence begins being served, the maximum for that sentence also begins and once that sentence's imposed minimum is completed the **next minimum sentence commences as does that sentence's maximum and so forth for any additionally imposed consecutive sentences and, once a maximum sentence is completed, the next maximum sentence, which began when that sentence's minimum began being served and that sentence's maximum is completed on its maximum date and so forth for additionally imposed minimum and maximum consecutive sentences sand Petitioner cites below his consecutive sentences as example:**
(cc is concurrent; cs is consecutive; m is month)

Sentence No.	Min.-max.	Start Date	Completed
754-98 cc to:	1m.-12ms.	4/19/2000	4/19/2001
92-99 cs to:	6m.-24ms.	4/19/2000	4/19/2002
1050-pp cs to:	6m.-24ms.	10/19/2000	10/19/2002
706-0	3m.-18ms.	4/19/2001	10/19/2002

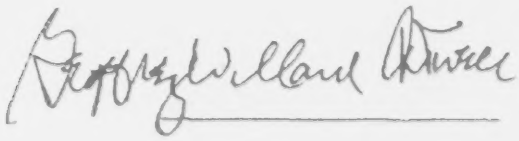
Each above sentence minimum was less than One half each sentence maximum and as (3)

Sentence maximums were simultaneously running during the same calendar time and the and the fourth maximum sentence completed upon the completion of the third maximum sentence and the first two maximum sentences were already completed, all maximum sentences were completed on October 19, 2002. **Petitioner was denied his liberty interest of freedom in violation of U.S.C.A. Amendments 5.and 14. and which precipitated violation of the 8th Amendment.**

6. **Petitioner** moved for appointment of counsel in the **District and Appellate Courts** but was denied and as **Petitioner** has no legal training or legal rapport, **Pro Se Petitioner charges that he should have appointed counsel.**

7. **Based upon the foregoing, Petitioner charges that he should be granted Writ of Certiorari and Judgment/**

Respectfully



Geoffrey Willard Atwell,
Petitioner

EXECUTED
January 1, 2011